

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

Criminal Case No. 2:13-cr-20564-1

Civil Case No. 2:18-cv-12039

v.

HONORABLE STEPHEN J. MURPHY, III

D-1 MOHAMED FARAJ,

Defendant/Petitioner

**ORDER FINDING ATTORNEY-CLIENT PRIVILEGE
WAIVER AND GRANTING PETITIONER'S MOTION TO COMPEL [395]**

On February 5, 2019, the Government filed a motion seeking copies of certain attorney-client communications and correspondence. ECF 416. The Government explains that it needs the input of Petitioner's trial counsel to address Petitioner's allegations. *Id.* at 6102.

On February 15, 2019, the Court ordered Petitioner to either show cause why the Court should not find that he waived his attorney-client privilege with his former attorney, Mr. Howarth, or withdraw his ineffective-assistance claim in writing no later than March 18, 2019. ECF 422. The Court warned that if Petitioner did not show cause or withdraw his claim by March 18, 2019, or otherwise object to the Court finding waiver, "the Court [would] recognize that Petitioner has waived the attorney-client privilege and work-product privilege between himself and Mr. Howarth to the extent necessary to litigate his claim." *Id.* at 6131. The Court also instructed that it would "order Mr. Howarth to provide testimony and all documents and

communications with Petitioner related to Petitioner's ineffective-assistance allegations." *Id.* Petitioner failed to respond to the Court's order. Consequently, the Court will order Mr. Howarth to provide "communications between petitioner and himself about the issues to be pursued at trial in relation to its impact on jury instruction requests, and discussions between trial counsel and petitioner about jury instructions." *Id.* (quoting ECF 416, PgID 6103).

Additionally, Petitioner filed a "motion to compel trial counsel" on October 16, 2017, requesting that his former counsel provide him:

Any and all Pre-Trial Discovery Material relating to his case, and any Material Evidence and Documents, tangible and non-tangible, and all evidence the United States intended to use during trial, Witness and Informant Statements, Scientific Reports, and all Pre-Trial Motions and Documents, Police Reports, Affidavits, Search Warrants, Surveillance [sic] Photos.

ECF 395, PgID 5947. Petitioner also seeks trial and sentencing transcripts. *Id.* The Court will grant Petitioner's motion to the extent it seeks information relevant to his claims under 28 U.S.C. § 2255. If Mr. Howarth possesses material relevant to Petitioner's 28 U.S.C. § 2255 motion that he has not yet given to Petitioner, Mr. Howarth shall provide a copy to Petitioner.

ORDER

WHEREFORE, it is hereby **ORDERED** that the Petitioner has **WAIVED** the attorney-client privilege to the extent necessary to litigate his claim.

IT IS FURTHER ORDERED that Mr. Howarth shall **DISCLOSE** to the Government testimony and all documents and communications with Petitioner related to Petitioner's ineffective-assistance allegations including communications

between petitioner and himself about the issues to be pursued at trial in relation to its impact on jury instruction requests, and discussions between trial counsel and petitioner about jury instructions.

IT IS FURTHER ORDERED that Petitioner's Motion to Compel [395] is **GRANTED**. To the extent Mr. Howarth possesses evidence relevant to Petitioner's motion under 28 U.S.C. § 2255 that he has not yet given to Petitioner, he shall **DISCLOSE** to Petitioner the materials.

IT IS FURTHER ORDERED that the Government shall file its response to Petitioner's § 2255 motion by **Friday, May 31, 2019**.

SO ORDERED.

s/ Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: April 16, 2019

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on April 16, 2019, by electronic and/or ordinary mail.

s/ David P. Parker
Case Manager